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DATE:

MATTER OF: Marie Grant - Extended Detail to Higher Grade Position

DIGEST:

1. Air Force detailed GS-4 employee to GS-5 position for over 1 year beginning July 1, 1970, without obtaining Civil Service Commission's prior approval of extension beyond 120 days. Agency's discretionary authority to retain employee on detail continues no longer than 120 days, after which agency must either have obtained Commission approval or grant employee temporary promotion. Since agency failed to obtain approval, employee is entitled to retroactive temporary promotion from 121st day of detail to its termination.
2. Decision B-183086, December 5, 1975, 55 Comp. Gen. ___, entitling otherwise qualified employee to temporary promotion on 121st day of detail to higher grade position when prior approval of extension of detail beyond 120 days has not been obtained from Civil Service Commission will be applied retrospectively to extent permitted by 6-year statute of limitations applicable to General Accounting Office.

This decision is rendered in response to a request to resolve a claim for backpay of Ms. Marie Grant.

Ms. Grant occupied a GS-4 accounting technician position at Kelly Air Force Base, Texas, on July 1, 1970. On that date she was detailed to a GS-5 accounting technician position. This detail continued at least until July 27, 1971, when her agency began a reorganization program which was carried out under reduction-in-force (RIF) procedures. A GS-5 employee who was reached through the RIF was assigned to the GS-5 position Ms. Grant was occupying. The GS-4 position to which she was permanently assigned was identified as surplus and was consequently abolished and Ms. Grant was reassigned to another GS-4 position. She has now filed a claim for backpay representing the difference in pay between grade GS-4 and grade GS-5 for the period she was detailed to the higher grade position.

Recently we had occasion to consider a similar case, B-183086, December 5, 1975, 55 Comp. Gen. ___, involving a backpay claim of an employee for performing duties of a higher grade position to which

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he was officially detailed for an extended period. We held there, that employee detail regulations contained in chapter 300 of the Federal Personnel Manual must be construed to the effect that an agency's discretionary authority to retain an employee on detail to a higher grade position continues no longer than 120 days and that the agency must either have sought prior approval of the Commission for an extension of the detail or temporarily promote the detailed employee at the end of the specified time period, if he is otherwise qualified. Therefore, we held in B-183086, *supra*, that where an agency has failed to seek prior approval of the Commission to extend an employee's detail period in a higher grade position past 120 days, it has a mandatory duty to award the employee a temporary promotion if he continues to perform the higher grade position and is otherwise qualified for the promotion.

Because our decision was based on a clarification rather than a substantive amendment to Civil Service Commission regulations governing employee details, the decision will be given retrospective as well as prospective application. Accordingly, the temporary promotion rule for details over 120 days is to be applied to any claim concerning this matter, provided the detail regulations in chapter 300, Federal Personnel Manual, in effect at the time of the detail is substantially the same as in effect at the time of the Civil Service Commission ruling. Also, the claim must be filed, within the 6-year period applicable to claims cognizable by our Office as set forth in 31 U. S. C. § 71a (Supp. IV, 1974). Backpay claims involving extended details that we have previously considered and disallowed, may be resubmitted for reconsideration by this Office under the conditions stated in this decision.

In the instant case the agency failed to seek approval of Ms. Grant's detail prior to the expiration of the aforementioned time limit. Therefore, she became entitled to a temporary promotion to grade GS-5 on October 29, 1970, 121 days after her detail began, since she satisfied the time-in-grade restrictions set forth in 5 C.F.R. chapter 300, subpart F (1969) and the detail regulations were substantially the same as those involved in B-183086, *supra*. Her entitlement to the temporary promotion continued until July 27, 1971, or the date when her detail was officially terminated, whichever is later, and she began to perform the duties of a grade GS-4 position.

Pursuant to the foregoing, her agency should grant her a retroactive temporary promotion to grade GS-5 for the stated period together with backpay and make appropriate record corrections as authorized under provisions of 5 U. S. C. § 5596, supra, and applicable implementing regulations.

R. F. KELLER

deputy

Comptroller General
of the United States